

# California Statewide Phase II MS4 Hearing



Natural Resources Defense Council  
February 5, 2013

# Stormwater Controls are Necessary and Practicable



Ballona Creek, Los Angeles (California)



(LA Times)



# Legal Context

## MS4 Permits:

“shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.*”

33 U.S.C. § 1342(p)(3)(B)(iii)

The MEP Standard will “evolve and mature over time’ and must be flexible to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality.”

55 Fed.Reg. 47990, 48052

# Impaired Waters



# Low Impact Development



City of Los Angeles/Haan-Fawn Chau



City of Los Angeles

EPA finds that “In the vast majority of cases . . . Implementing well-chosen LID practices saves money for developers, property owners, and communities while protecting and restoring water quality.”

# Post-Construction Requirements

## Low Impact Development - the Draft Permit Must: (E.12.e(ii)(c))

- Require on-site retention of, at minimum, the 85th percentile storm event with no discharge where feasible.
  - Alternative designs or biofiltration (with discharge) are not authorized where retention is feasible. (E.12.e(ii)(d).)



# Post-Construction Requirements

Low Impact Development - the Draft Permit Must:  
(E.12.e(ii)(g))

- For alternative designs, clarify that ALL “measures of equivalent effectiveness” must be met for practice to be authorized,



# Post-Construction Requirements

Low Impact Development - the Draft Permit Must:  
(E.12.e(ii)(h-i))

- Smart Growth projects:
  - No justification/evidence given for why smart growth is treated differently from other development or from pedestrian oriented development from water quality perspective. Should require LID unless infeasible
  - Must at minimum include definition of smart growth such that exemption does not encompass entire metropolitan areas
  - Under SWRCB Order WQ 2000-11 (*Bellflower*), must at minimum treat all runoff from 85<sup>th</sup> percentile storm conventionally



# Post-Construction Requirements

Low Impact Development - the Draft Permit Must:  
(E.12.e(ii)(k-l))

- Watershed Processes and Alternative Programs:
  - To meet MEP, must require baseline that any program or project result in retention of runoff from the 85<sup>th</sup> percentile storm.
  - For Alternative programs (E.12.e(ii)(l)), regional or alternative projects should ensure that runoff is conveyed from new development or redevelopment project directly, with no discharge to receiving waters.
    - Where offsite or in-lieu compliance is used, must at minimum require conventional treatment on-site of runoff from the 85<sup>th</sup> percentile storm event.

# Post-Construction Requirements

Hydromodification - the Draft Permit Must:

(E.12.e(ii)(f))

- Should require post-project runoff shall not exceed estimated pre-project flow rate for the 10-year, 24-hour storm





George Wolfe